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NOTE FOR: Deputy Director for Administration

FROM : **STATINTL**
[Redacted]
Office of General Counsel

SUBJECT : CIA and the Civil Service Reform Bill

Attached please find copies of the relevant pages of testimony from the 4 April 1978 hearing on the Civil Service Reform Bill conducted by the House Post Office and Civil Service Committee. This testimony was referenced in my memorandum for the record dated 7 April 1978 (OGC 78-2213).

STATINTL



Attachment

REFERENCE /

1 regulations as the tomcat does a marriage license.

2 And I think it is about time somebody down at the Com-
3 mission points out to them that, hay, stop this. You people
4 are violating the rules and regulations.

5 And maybe the new law that you propose would do something
6 about it, but, heavens, we have rules and regulations now
7 in the Commission so you would be able to deal with that
8 blatant violation of civil service regulations.

9 Mr. Campbell. Yes, I want to respond that we are indeed
10 in touch with and in conversations with the Agriculture Depart-
11 ment and anticipate that there will be corrective actions
12 where necessary taken.

13 Mr. Taylor. Thank you very much.

14 Mr. Nix. Mrs. Schroeder?

15 Mrs. Schroeder. Thank you very much, Mr. Chairman.

16 I have a gigantic list of questions. We are at a ten-
17 minute limit, is that right?

18 Mr. Nix. That's right.

19 Mrs. Schroeder. I will put these through, and we will
20 come back again. I have some questions about the Senior
21 Executive Service.

22 You say in there that you are going to ask different
23 agencies to make a sustained effort to bring the personnel
24 system into conformity with the Senior Executive Service
25 insofar as it is practical.

1 My question is: if you really believe that this is a
2 good reform, why shouldn't they be required to do it or are
3 there some agencies that will never do it? If so, do you have
4 a list of them? And could you give us some idea about what
5 they would be?

6 Mr. Campbell. Vice Chairman Sugarman has been most
7 involved in the development of the proposal as it relates to
8 other merit systems in the Federal Government. And I am going
9 to ask him to respond to your question.

10 Mr. Sugarman. Your reference there, Mrs. Schroeder, is
11 to organizations like the Federal Bureau of Investigation,
12 Foreign Service, certain agencies that Congress has generally
13 ^{ex}accepted from the general Civil Service System.

14 Nevertheless, we see some value in having their top
15 senior officials who are usually selected on the merit basis
16 have the opportunity to serve in the general Civil Service
17 and vice versa.

18 We have had discussions with some of those agencies, and
19 there is some interest in doing that. But we felt it was
20 precipitous to try to mandate that every single agency be
21 covered at this point.

22 Mrs. Schroeder. Wouldn't it be better, say, that all
23 agencies are covered except for the following, and then you
24 hope that they will be covered eventually?

25 Mr. Sugarman. Well, the effective language as it is
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1 proposed is to cover all those agencies, but allow the
2 President for good and sufficient reason to exempt an agency
3 on a temporary basis, using the time after that to try to
4 bring them along to the point where they are willing to parti-
5 cipate.

6 Mrs. Schroeder. I am not quite sure I read it that way,
7 but, okay.

8 Then, my other question that I have is on these Quali-
9 fication Review Boards and other performance review boards,
10 how many people will be on them and what kind of salary and
11 at what salary level?

12 Mr. Sugarman. The Qualification Review Boards in the
13 Office of Personnel Management will be a mixture of federal
14 employees and people from outside of the public service,
15 distinguished people from outside the public service.

16 Federal employees will receive no additional salary for
17 their service. And the outsiders will be paid as consultants
18 on a per diem basis.

19 Mrs. Schroeder. At what level?

20 Mr. Sugarman. The legislation does not specify. Typically,
21 we pay at the level 18 rate.

22 Mrs. Schroeder. And how many people will be on the
23 Qualification Reviews?

24 Mr. Sugarman. Well, I think that would vary, Mrs.
25 Schroeder, depending on the kind of jobs you were looking at.

REFERENCE 2

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1 has done is insist that the process agreed to with the labor
2 unions be followed and there be consultation with those unions
3 so when the President does make his decision, he will have
4 before him the views.

5 As you, I am sure, are aware, there was an official
6 meeting of the pay council with the union leadership last
7 week, and there will be another meeting this week to receive
8 their written views.

9 Mr. Harris. I certainly agree with that. I think that
10 is a good part of the process.

11 I also think a good part of the process along with
12 other recommendations from the Council of Economic Advisors
13 and others, they hear the recommendation from the Civil
14 Service Commission also.

15 Can I refer specifically to Section 2301 which lists those
16 agencies covered by the merit system principles?

17 Generally, it appears that all executive agencies are
18 covered except executive-related agencies. Some agencies in
19 the legislative and judicial branches. Could you tell me
20 specifically which executive agencies would not be covered?

21 Mr. Sugarman. I think, Mr. Harris, that we have no plans
22 at this point in time to exempt any specific executive branch
23 agency. There may be agencies such as the FBI which will
24 present considerations of security that would call for us to
25 handle them somewhat differently.

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1 But basically, it is the intent that the prohibitions and
2 the principles be extended to all the agencies in the
3 Executive Branch.

4 Mr. Harris. What about the agencies exempted by Congress
5 from the current civil service laws? For example, 95108
6 gave the Director of the Arms Control and Disarmament Board
7 the authority to exempt certain personnel actions from
8 5 U.S.C. which governs employment to the competitive service.

9 Would your bill bring agencies like this or groups of
10 employees exempted by the law back into the merit system?

11 Mr. Swygert; Congressman, that law was that positive
12 law would stay in effect unless and until such time as the
13 bill was amended to specifically reverse that law or to revoke
14 that authorization. And there is no intent to revise by impli-
15 cation the legislation.

16 Mr. Harris. So any of those areas that are currently
17 exempted by law are not repealed or changed with the enactment
18 of the bill which you propose.

19 Mr. Swygert. I don't want to say "any," Congressman,
20 because I would have to look at the legislation as it relates
21 to each agency that you refer to.

22 Mr. Harris. There is no specific attempt, though, in
23 this law to change Congressional exemption?

24 Mr. Swygert. No.

25 Mr. Harris. Section (2)(D) on page 6 gives the President
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REFERENCE 3

Mr. Campbell. It will be a matter of determination by the Office of Personnel Management whether there is justification for decentralizing the examining authority on an agency in relationship to that agency's particular needs, its exclusive use of a particular type of occupation, or its serving as a central point for a number of agencies.

In those cases, registers would be maintained by the agencies that have that kind of authority delegated to them. For those positions which would probably continue to be the majority of positions for which there are centralized examining and maintenance of central registers, they would continue to be with the Civil Service Commission.

This situation is possible even today under current delegating powers of the Civil Service Commission. And there has been delegation to a number of agencies in a number of specific areas the power to develop and keep its own registers.

That, obviously, is an inspection function and auditing function of the Commission and would be of the Office of Personnel Management to make sure that that is done in ways appropriate and consistent with the law.

Mr. Taylor. Just looking back, at the present time, Dr. Campbell, this committee busied itself a couple years ago with some situations that arose under a previous administration.

We had bipartisan concern about some abuses of the merit

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1 system that we felt were there.

2 And I just wonder under this legislation if these
3 responsibilities of maintaining and formulating registers
4 within the agencies -- I just wondered what kind of an
5 operation we would have under an Allen May or a Bob Bercland
6 with this man Thornton who does the same thing in Agriculture
7 evidently as Mr. May does, if we wouldn't really go back into
8 a spoils system where the agency itself maintained its own
9 register without proper supervision by an independent agency
10 such as the Civil Service Commission that would guarantee
11 a fair and just treatment for all people desiring federal
12 employment.

13 Mr. Campbell. I would argue that the question of whether
14 there is likely to be abuse is not related to whether the
15 registers are centralized or decentralized. In fact, I would
16 argue today that under certain decentralized systems, the
17 Federal Government, the CIA, Foreign Service, FBI, that the
18 maintenance of the integrity of those merit systems has been
19 very high.

20 Mr. Taylor. It will be just as good as the agency head
21 wants it to be.

22 Mr. Campbell. It will be just as good as the agency head
23 wants it to be. And beyond that, under the new legislation, the
24 agency head will be held legally responsible for his actions
25 in a way that is not true now in the personnel area.

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1 Secondly, there will be the opportunities presented by
2 the Merit Systems Protection Board and the Special Counsel
3 to investigate any possibilities of abuse or any charges of
4 abuse.

5 And I would suggest that the potential for abuse of the
6 system is not really related to the centralization/decentral-
7 ization issue, but rather it is related to the ability of the
8 system to respond quickly and effectively. And we believe
9 that what we have done here is created a system that is able
10 to respond through the creation of an agency genuinely inde-
11 pendent, having the ability to do that.

12 And in that sense, I would suggest that the current
13 system would have gone a long way to have stood in the way of
14 the kinds of abuses which have occurred in previous Admin-
15 istrations.

16 And I would only make one further comment --

17 Mr. Taylor. And continue to exist under this one, I
18 submit.

19 Mr. Campbell. No. I hear you. I do not agree that they
20 are continuing to occur under this Administration. And I am
21 convinced Secretary Bergland in terms of your earlier comment
22 is indeed attempting to get on top of the situation in the
23 Agriculture Department. And we will shortly have corrective
24 actions.